

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY STEWART and DEPARTMENT OF VETERANS AFFAIRS,
HEALTHCARE SYSTEM, San Diego, CA

*Docket No. 00-34; Submitted on the Record;
Issued January 16, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he developed an emotional condition due to factors of his federal employment.

Appellant, a food services worker, filed a claim on March 5, 1998 alleging that he developed stress and depression due to his employment. He had two prior claims for an employment injury to both his right and left upper extremities. By decision dated July 29, 1998, the Office of Workers' Compensation Programs denied appellant's claim for disability beginning on February 9, 1998 due to his right shoulder injury.¹ By decision dated June 22, 1999, the Office denied his claim for an emotional condition.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment to hold a particular position.²

¹ As this decision was issued on July 29, 1998 more than one year prior to the date of appellant's appeal to the Board on September 2, 1999, the Board will not consider this issue on appeal. 20 C.F.R. § 501.2(c).

² *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Appellant attributed his emotional condition to denials of promotions. The employing establishment noted that appellant had applied for five separate positions, but that he had not received a promotion as he was not felt to be the best candidate. The Board has held that the denial of a promotion is not a compensable factor of employment as this does not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitutes his desire to work in a different position.³

Appellant alleged that he was not promoted due to racial discrimination. He further alleged that he was harassed by his supervisor for mismanaging his leave. For harassment or discrimination to give rise to a compensable disability under the Federal Employees' Compensation Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.⁴

In support of his claim for discrimination, appellant alleged that only persons of Philippino descent were promoted. He also filed an Equal Employment Opportunity Commission complaint. However there is no decision on this complaint in the record. Appellant has submitted no corroborating evidence supporting his allegations of harassment and discrimination. Therefore he has failed to substantiate his allegations or factors of employment.

Appellant alleged that he was trained to perform the duties of a particular position, that he was denied that promotion and that he was required to train the person who received the promotion. The employing establishment stated that voluntary training was offered to all employees, that appellant was not guaranteed the promotion and that appellant did not train the promoted employee. The employing establishment noted that appellant was not working the same shift as the promoted individual and that appellant was not listed as a trainer on the schedule.

As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.⁵ In this case, appellant has submitted no evidence that the employing establishment acted unreasonably in offering training to him and has submitted no evidence supporting his allegation that he was required to train others promoted past him.

³ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

⁴ *Alice M. Washington*, 46 ECAB 382 (1994).

⁵ *Martha L. Watson*, 46 ECAB 407 (1995).

As appellant has failed to substantiate a compensable factor of employment, he has failed to meet his burden of proof and the Office properly denied his claim.

The June 22, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 16, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member